

\* THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

+ APPEAL SUIT NO.696/2025

% Dated: 19.01.2026

# Sri Podilapu Srinivasa Rao .....Appellant

And

Sri Gandreti Ugadi and two others .....Respondents

! Counsel for the Appellants : Sri Balu Anil Kumar Palla

^ Counsel for the Respondents : --

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2022 Livelaw (SC) 345
2. (2012) 1 SCC 656
3. (1977) 3 SCC 247

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

**APPEAL SUIT NO.696 OF 2025**

Podilapu Srinivasa Rao .....Appellant

And

Sri Gandreti Ugadi and two others .....Respondents

**DATE OF ORDER PRONOUNCED: 19.01.2026**

1. Whether Reporters of Local newspapers Yes/No  
may be allowed to see the Judgments?
  
2. Whether the copies of judgment may be Yes/No  
Marked to Law Reporters/Journals.
  
3. Whether Their Lordship wishes Yes/No  
to see the fair copy of the Judgment?

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RAVI NATH TILHARI, J

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MAHESWARA RAO KUNCHEAM, J

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

**APPEAL SUIT NO: 696/2025**

**JUDGMENT:** (*per Hon'ble Sri Justice Ravi Nath Tilhari*)

Heard Sri Balu Anil Kumar Palla, learned counsel for the appellant.

2. The 1<sup>st</sup> respondent is the decree holder in O.S.No.289 of 2017 on the file of the Principal District Judge, Visakhapatnam. The respondents 2 and 3 are the judgment debtors.

3. The suit was decreed on 23.09.2019 and attained finality. The decree was a money decree based on a promissory note dated 02.07.2016 executed by the respondents 2 and 3.

4. The decree holder filed E.P.No.56 of 2020 for execution of the decree. In the said E.P, the appellant filed E.A.No.328 of 2023 as claim petition under Order XXI Rule 58 of the Code of Civil Procedure(C.P.C).

5. In the suit, the subject property was attached vide order dated 25.07.2017 passed by the learned Principal District Judge, Visakhapatnam. The attachment was effected on 05.08.2017.

6. The E.A. was filed claiming title to the E.P. schedule property(the attached property) based on Exs.A1 and A7 as filed in the Execution Petition.

7. Ex.A7 is the Photostat copy of the agreement of sale with General Power of Attorney(G.P.A) dated 11.09.2018. Ex.A7 is between the judgment debtor No.1 (2<sup>nd</sup> respondent) and Sri Gokulam Chits and Finance Company Private Limited(the 'Finance Company').

8. Ex.A1 is the certified copy of the sale deed dated 27.01.2020. Learned counsel for the appellant submits that the Ex.A1 has been wrongly mentioned in the impugned judgment as sale agreement dated 27.01.2020. He submits that the appellant purchased the attached property vide sale deed dated 27.01.2020 (Ex.A1) from the Finance Company.

9. The E.A.No.328 of 2023 has been dismissed by the learned Principal District Judge, Visakhapatnam vide judgment and decree dated 29.10.2025.

10. The learned Principal District Judge has taken the view that the sale deed is after the date of the attachment. The agreement of sale-cum-G.P.A dated 11.09.2018(Ex.A7) did not relate to the claim petitioner. He is the third party. Besides, Ex.A7 is after the date of attachment. The rejection of the E.A is on the ground of Section 64(1) of C.P.C that, where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

11. Challenging the judgment and decree dated 29.10.2025, the appeal has been filed by the claim petitioner/appellant.

12. Learned counsel for the appellant submits that the property under attachment was initially mortgaged on 30.07.2016 with the Finance Company by the judgment debtor No.1(2<sup>nd</sup> respondent). The date of the mortgage is prior to the date of the attachment. The sale deed in favour of the claim petitioner was executed in pursuance of the pre-attachment mortgage contract, dated 30.07.2016. So in view of Section 64(2) C.P.C, the sale deed would

not be void but is saved. The rejection of the appellant's E.A therefore, is not justified.

13. We have considered the aforesaid submissions of the learned counsel for the appellant and perused the material on record.

14. Section 64 C.P.C deserves reproduction, which reads as under:

*“1)Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.*

*2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.”*

15. Sub-section(2) of Section 64 C.P.C provides that nothing in Section 64(1) shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

16. A perusal of Section 64 C.P.C makes it evident that to attract sub-section (2) of Section 64 C.P.C, the private transfer or delivery of the attached property or of any interest thereon must have been

made pursuant to any contract of transfer entered into and registered before the attachment.

17. There is no dispute on the dates i.e. the date of attachment (25.07.2017), date of sale deed(27.01.2020) and the alleged agreement of sale-cum-G.P.A(11.09.2018). The date of mortgage deed is 30.07.2016.

18. The agreement of sale-cum-G.P.A is dated 11.09.2018 (Ex.A7). The sale deed is dated 27.01.2020. Ex.A7 is clearly after the date of attachment in the suit made on 25.07.2017. It cannot also be said that the transfer vide sale deed dated 27.01.2020 is made pursuant to any contract for such transfer entered into and registered before the attachment as any such contract for sale in favour of the claim petitioner/appellant has neither been pleaded nor brought on record.

19. In ***Dokala Hari Babu v. Kotra Appa***<sup>1</sup>, the Hon'ble Apex Court held that to get the benefit of sub-section(2) of Section 64 of the CPC, the objector and/or subsequent purchaser has to plead and prove that he is the bona fide purchaser, who has entered into the transaction prior to the order of attachment.

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<sup>1</sup> 2022 Livelaw (SC) 345

20. In the present case, the claim petitioner has not entered into the transaction prior to the order of attachment. The sale deed is after the date of attachment and there is no agreement of sale in favour of the claim petitioner of a date prior to the order of attachment, pursuant to which it can be said that the sale deed was executed.

21. In ***Om Prakash Garg v. Ganga Sahai and others***<sup>2</sup>, the property was mortgaged and was sold in execution and was purchased on September 4, 1963. The sale was confirmed in favour of the decree holder on May 24, 1965. Afterwards, the respondent/decree holder brought a suit for redemption and obtained a decree on October 14, 1967. The appeal of the mortgagee, Narain Prasad was dismissed on January 22, 1971. The appellant therein, Om Prakash Garg claimed to be the mortgagee's tenant. It was his case that the property was leased in his favour by the mortgagee sometime in March/April 1965 during the subsistence of the attachment. The Hon'ble Apex Court held that the alleged lease was, affected by Section 64 C.P.C. and that being so, the said appellant could not claim the status of a tenant against the respondent/mortgagor.

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<sup>2</sup> (1987) 2 SCC 553

22. Learned counsel for the appellant emphasized on the mortgage deed dated 30.07.2016, to contend that this date is prior to the attachment. Therefore, the sale deed pursuant to such mortgage is saved under sub-section (2) of Section 64 of the Act.

23. The aforesaid contention with respect to the mortgage being of a date prior to attachment is of no relevance in the present case. The mortgage is by the judgment debtor No.1 in favour of the Finance Company(mortgagee). The contention being raised is, as if the transfer/sale deed has been made by the mortgagee in favour of the claim petitioner/appellant. But, the fact is that the mortgagee has not transferred the property to the claim petitioner, vide the sale deed dated 27.01.2020 (Ex.A1). The mortgagee the Finance Company has executed the sale deed as a Power of Attorney holder of the mortgagor (vendor/the judgment debtor No.1). It is so evident from perusal of Exs.A1 and A7, the G.P.A-cum-agreement of sale dated 11.09.2018. Ex.A7 is of a date after the attachment and not before the attachment. It is well settled legal position that G.P.A-cum-agreement of sale, does not confer any title to the property with respect to which it relates. In ***Suraj Lamp and Industries Private Limited v. State of Haryana and another***<sup>3</sup>, the Hon'ble Apex Court

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<sup>3</sup> (2012) 1 SCC 656

has held that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. So, even based on Ex.A7, in favour of the Finance Company it could not make the sale as 'vendor' but sale could be made as GPA holder of the vendor/judgment debtor No.1. The sale deed, Ex.A7 also mentions the same. So, the sale deed, Ex.A7 in favour of the claim petitioner is by the judgment debtor No.1, through G.P.A. holder, and there is no agreement/contract of sale, executed and registered prior to the date of attachment pursuant to which Ex.A7 has been executed in favour of the claim petitioner.

24. We shall also consider the legal position regarding transfer made by a mortgagee, as the contention is that the transfer is by the mortgagee (Finance Company), though as discussed above we are satisfied that the transfer (sale deed) is not by the Finance Company as mortgagee but as Power of Attorney Holder of the vendor/judgment debtor No.1.

25. The mortgagee's power of sell, is dealt with by Section 69 of the Transfer of Property Act(in short 'the T.P.Act'). It reads as under:

69. *Power of sale when valid.*—(1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the court, in the following cases and in no others, namely:—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;
- (b) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the Government;
- (c) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town<sup>11</sup> or area which the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) No such power shall be exercised unless and until—

- (a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or
- (b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-

*money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.*

*(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882."*

26. Under Section 69(1) of the T.P.Act, a mortgagee, or any person acting on his behalf , shall, have the power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, only in the case given in clauses (a) to (c) of Section 69(1), and in no other case. As per clause (c), a mortgagee has power of sale where that power has been conferred by the mortgage deed.

27. In ***Narandas Karsondas v. S.A.Kamtam and another***<sup>4</sup>, the Hon'ble Apex Court held that Section 69 of the Transfer of Property Act deals with mortgagees' power of sale. Under the said Section 69(1)(c), a mortgagee has power of sale without the intervention of the Court where power is conferred by the mortgage deed and the mortgaged property or any part thereof was on the date of the execution of the mortgage deed, situate within the towns of Calcutta, Madras, Bombay or in any other town or area which the State Government, may, by notification in the Official Gazette, specify.

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<sup>4</sup> (1977) 3 SCC 247

28. In the present case, **firstly**, the sale is not by the mortgagee; the sale is by the judgment debtor through mortgagee, as the power of attorney holder. The transfer is by the vendor, the judgment debtor and not by the mortgagee and **secondly**, it could not be shown to us that there was a power of sale conferred on the mortgagee in the mortgage deed dated 30.07.2016. Further, subsection (2) of Section 69 of the T.P.Act provides that no such power of sale shall be exercised by the mortgagee unless and until, *inter alia*, notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service. It is not the case argued before us by the learned counsel for the appellant that the requirement of any notice in terms of Section 69(2)(9) was complied with.

29. So, the sale deed, Ex.A7 is neither by the mortgagee nor it could be shown that, even if the argument be taken as accepted for the time being, it cannot be a sale deed in pursuance of a mortgage deed executed prior to the date of attachment.

30. Consequently, our conclusions are that:

- 1) The sale deed in favour of the claim petitioner/appellant is also after the date of attachment;
- 2) There is no agreement/contract of sale in favour of the appellant/claim petitioner executed and registered prior to the date of attachment.
- 3) So, the execution of the sale deed, after the date of attachment, in favour of the claim petitioner, is not pursuant to an agreement of sale in his favour executed and registered prior to the date of attachment.
- 4) The sale is by the judgment debtor No.2, through the Power of Attorney Holder (i.e. mortgagee, the Finance Company) in the capacity of Power of Attorney Holder;
- 5) The Power of Attorney(Ex.A7) is also after the date of the attachment;
- 6) The date of mortgage 30.07.2016, which is prior to attachment is not relevant in the present case, since the sale is not by the mortgagor as mortgagee.

7) Further, the sale deed dated 27.01.2020(Ex.A1)is not by the mortgagee in terms of Section 69 of the T.P.Act;

8) Section 64(1) C.P.C. is attracted. The sale deed (Ex.A1) is void.

9) Section 64(2) C.P.C is not attracted.

10) The impugned order is justified.

31. Consequently, in our view, the learned Principal District Judge has not committed any illegality in passing the impugned order.

32. The Appeal Suit lacks merit and is dismissed. There shall be no order as to costs.

As a sequel, interlocutory applications pending if any, shall stand closed.

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM, J**

Date: 19.01.2026

Note:

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
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